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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 2252/2015

BIMLA

..... Petitioner

Through: Mr.R.K.Bachchan, Advocate.

versus

STATE

..... Respondent

Through: Mr.R.S.Kundu, A.S.C. for the State
with SI Vikash Yadav, PS Palam
Village.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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13.05.2016

W.P.(Crl.) No.2252/2015

1. The petitioner has invoked the writ jurisdiction of this Court with a prayer to quash the externment order dated 15.07.2015 passed by Addl. DCP, South West District whereby the petitioner was externed from the limits of NCT of Delhi for a period of two years with effect from 22.07.2015. The remedy of appeal availed by the petitioner also could not bring desirable results. The appeal filed by her has been dismissed on 12.08.2015 by the Lieutenant Governor of NCT of Delhi.

2. The grounds on which the petitioner is impugning the order of externment are as under:-

(a) In the proceedings before the Addl.DCP, South West District she was not provided legal aid at State expenses and was asked to cross examine SHO, PS Palam Village, who was the sole witness. Thus, she remained unrepresented and without legal assistance during the externment proceedings.

(b) The externment proceedings stand vitiated as she was not provided

with the legal aid. The matter needs to be remanded for denovo trial from stage one.

(c) In the externment proceedings, one of the ground for seeking her externment is that witnesses were not forthcoming but the names of those witnesses have not been disclosed.

(d) The Appellate Court failed to appreciate that no public witness was examined in this case.

3. Mr.R.K.Bachchan, Advocate for the petitioner has submitted that removal of a person can be ordered under Section 47 of Delhi Police Act if he is engaged in the commission of offence under Indian Penal Code as held in *Akash Kashyap @ Puniyan vs. Lt.Governmor of Delhi & Anr.* in W.P.(Crl.) No.1148/2015 decided on 15.07.2015. He has further submitted that petitioner is not a habitual offender. She was not involved in three cases within one year preceding the commencement of externment proceedings. There was no complaint by any person against her and no legal aid was provided to her. Learned counsel for the petitioner has also placed reliance on *Vishnu vs. Lt.Governor of Delhi & Ors.* in W.P.(Crl.) No.2026/2015 decided on 04.12.2015, *Shakeela vs. State* 2014 III AD (Delhi) 221 and *Sachin @ Sonu vs. State & Ors.* in W.P.(Crl.) No.1374/2013 decided on 27.11.2013 and prayed for quashing of externment order.

4. On behalf of State, counter affidavit has been filed giving list of fourteen cases wherein the petitioner was involved during the period 2005 to 2015. Learned ASC for the State has submitted that Addl. DCP provided ample opportunity to the petitioner to avail legal aid facility which she deliberately did not avail. She was directed to contact Legal Aid Cell, Dwarka Courts for free legal aid which she failed to do. Hence it cannot be said that she was not provided the opportunity to defend herself.

5. Learned ASC for the State has submitted that the petitioner is a habitual offender and in view of her criminal record, she was ordered to be externed from the limits of NCT of Delhi for a period of two years.

6. In the decision reported as AIR 2005 SC 2080 State of NCT of Delhi and Anr. vs. Sanjeev @ Bittoo, the Apex Court has considered the scope and ambit of judicial interference in the matter of administrative decisions as well the power of the externing authority to decide the period of externment in paragraphs 14 and 15 which are extracted herein:-

“14. As regards the period, it was held that it is primarily for the externing authority to decide how best the order can be made effective, so as to subserve its real purpose. How long within the statutory limit of two years fixed by Section 58, the order shall operate and to what territories, within the statutory limitations of Section 58 it should extend are matters which must depend upon his decision on the nature of the data which the authority is able to collect in the externment proceedings. No general formulation can be made that order of externment must always be restricted to the area to which the illegal activities of the externee. There can be doubt that the executive order has also to show when questioned that there was application of mind. It is the existence of material and not the sufficiency of material which can be questioned as the satisfaction is primarily subjective somewhat similar to one required to be arrived at by the detaining authority under the preventive detention laws. The scope of judicial review of administrative orders is rather limited. The consideration is limited to the legality of decision-making process and not legality of the order per se. Mere possibility of another view cannot be ground for interference.

15. One of the points that falls for determination is the scope for judicial interference in matters of administrative decisions. Administrative action is stated to be referable to broad area of Governmental activities in which the repositories of power may exercise every class of statutory function of executive, quasi-legislative and quasi-judicial

nature. It is trite law that exercise of power, whether legislative or administrative, will be set aside if there is manifest error in the exercise of such power or the exercise of the power is manifestly arbitrary (See State of U.P. and Ors. v. Renusagar Power Co. and Ors. MANU/SC/0505/1988 : AIR1988SC1737. At one time, the traditional view in England was that the executive was not answerable where its action was attributable to the exercise of prerogative power. Professor De Smith in his classical work "Judicial Review of Administrative Action" 4th Edition at pages 285-287 states the legal position in his own terse language that the relevant principles formulated by the Courts may be broadly summarized as follows. The authority in which discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it; it must not act under the dictates of another body or disable itself from exercising discretion in each individual case. In the purported exercise of its discretion, it must not do what it has been forbidden to do, nor must it do what it has not been authorized to do. It must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to, the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. These several principles can conveniently be grouped in two main categories: (i) failure to exercise a discretion, and (ii) excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. Thus, discretion may be improperly fettered because irrelevant considerations have been taken into account, and where an authority hands over its discretion to another body it acts ultra vires."

7. In para 23 of the report, it was further emphasised that the order of externment should show existence of some material and it need not be akin to a judgment.
8. In para 24 of the report, it was observed that:-

“It is true that some material must exist but what is required is not an elaborate decision akin to a judgment. On the contrary the order directing externment should show existence of some material warranting an order of externment. While dealing with question mere repetition of the provision would not be sufficient. Reference to be made to some material on record and if that is done the requirements of law are met. As noted above, it is not the sufficiency of material but the existence of material which is sine qua non.”

9. In the impugned order dated 15.07.2015 list of thirteen cases registered under Excise Act has been given in which the petitioner has been involved till the initiation of externment proceedings. It is also mentioned in the impugned order that during the externment proceedings a report has been received from SHO, Palam Village to the effect that petitioner has also been found involved in case FIR No.244/15 under Section 20/61/85 NDPS Act, Palam Village.

10. The operative part of the impugned order dated 15.07.2015 reads as under:

‘I have carefully gone through the record and other relevant material available during the course of proceedings. The record suggests that the respondent is a criminal of such a desperate nature, who was involved in 13 criminal cases of Excise Act. Even during the course of proceedings the respondent was found involved in 01 criminal case of NDPS Act which leads to a total of 14 cases, which shows that she has no respect of Law and is not likely to improve her conduct till stringent measures are taken against her. She has even committed the crime during the pendency of externment proceedings, which indicates that she does not intend to mend her ways. Hence, option of “Bound Down” for good behaviour cannot be exercised. Unless and until, she is removed from the present environment and separated from her associates, she will not desist from her activities.

A close scrutiny of the record clearly indicates that there

are sufficient grounds to conclude that she is actively involved in criminal cases and adopted it as a means of livelihood. I am of the view that she is not likely to improve her conduct in future and her presence in the community creates harm and danger to the local residents. The witnesses are unwilling to depose in public against her because of the apprehension in regards to the safety of their person at the hands of the respondent and her conduct definitely requires stringent view. Her successive involvement goes to indicate that she has the propensity to indulge in future criminal activity.

Keeping in view the evidence brought on file i.e. notice, record of her criminal activities, prosecution witness and other evidence adduced during the course of proceedings, I have no hesitation in concluding that she is a criminal who is not likely to reform her way of life till stringent measures are taken as her acts in the area of NCT of Delhi are calculated to cause harm, danger and alarm to the respectable citizens. Her activities are adversely affecting the general well being and health of the law abiding citizens in the area of NCT of Delhi and they feel insecure. Moreover, unless she is weaned of her present company, she is not likely to reform herself and start a normal life. Her continuous presence in the area leads to alarm and apprehension in the mind of law-abiding citizens of the area is a constant source of tension and disturbance to other law-abiding citizens of the area who have a right to peaceful life. I am of the view that this case is well within the scope of section 47 of Delhi Police Act and she is fit person to be externed from the limits of NCT of Delhi.'

11. The appeal has been dismissed by the competent authority after considering the rival contentions noting the fact that even during externment proceedings, she was found involved in case FIR No.244/2015 registered under Section 20/61/85 of NDPS Act, PS Palam Village.

12. So far as the contention raised by the learned counsel for the petitioner that the petitioner has been denied legal assistance is concerned, it is not the case of the petitioner that she was in custody or that she

approached Legal Aid Services Committee, Dwarka Court for legal aid assistance but denied by the District Court Legal Services Committee. She has not even informed the externment authorities that she has ever made any attempt to have legal assistance free of cost. Thus, she cannot raise this ground to contend that the externment order is vitiated. It is also not the case of the petitioner that in the fourteen cases in which she was facing trial, she was not represented by counsel. It is not known if she had engaged some counsel of her own or she was dependent on legal aid counsel.

13. With a view to check propensity of the Petitioner and making prognosis of her future conduct, even her earlier involvement and the nature of cases in which she was previously involved, despite discharge or acquittal, can be taken into consideration by the Authority. (*Ref. Hari Khemu Gawali vs. Deputy Commissioner of Police 1956 CriL.J. 1104*).

14. Another contention raised on behalf of the petitioner that removal of a person can be ordered under Section 47 of Delhi Police Act if he is engaged in the commission of offence under Indian Penal Code only, is also not tenable in the eyes of law. The list of 14 cases given in the impugned order shows that the petitioner was consistently involved in cases registered under Excise Act and thereafter in the year 2015 she upgraded to the case under NDPS Act.

15. In the case *Dheeraj vs. State (NCT of Delhi)* 2001 (2) JCC Delhi 306, the Division Bench of this Court while referring to the observations made in *Smt. Shailender Kaur vs. Lt. Governor & Ors.* CrI.W.No.1041/2000 decided on 27.04.2001 has held that even where a person is involved in excise cases by very nature of their activities is calculated to cause danger to society. The Court observed that it would be perfectly legal and within the power of the competent authority to take all

the facts and circumstances including the cases covered by the Punjab Excise Act into consideration and to pass order of externment if adequate credible evidence and material is produced before him to satisfy him reasonably that the conditions precedent to the passing of the order of externment are in existence.

16. So far as case laws relied upon by the petitioner is concerned, the same are clearly distinguishable on facts, hence of no assistance to her.

17. The Additional DCP (South West District) has passed the above order recording his subjective satisfaction about the criminal activities of the petitioner which stood substantiated on the record.

18. Since the activities of the petitioner were dangerous to the public at large, and causing threat to the peace and tranquillity of the area, the petitioner was ordered to be externed from the limits of NCT of Delhi for a period of two years. The Appellate Authority has also considered the contention raised in the appeal and on finding the order passed by Additional DCP to be fair, upheld the same.

19. There is no merit in the pleas raised by the petitioner. Finding no infirmity in the impugned orders which have been passed on sufficient material available on record by the competent authority recording subjective satisfaction, the petition deserves dismissal.

20. The writ petition is hereby dismissed.

Crl.M.A. No.14813/2015 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 13, 2016

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